Memorandum 2003-6

Uniform Unincorporated Nonprofit Association Act
(Draft Tentative Recommendation)

The Commission has decided to recommend the reorganization and improvement of existing unincorporated association law, rather than adoption of the Uniform Unincorporated Nonprofit Association Act (“Uniform Act”). At its November 2002 meeting, the Commission directed the staff to prepare a draft tentative recommendation, which would include all of the decisions made to date. The draft tentative recommendation is attached. It includes various notes that are intended to solicit public comment on specific issues.

At the November meeting, the Nonprofit Organizations Committee of the Business Law Section of the State Bar indicated that it would prepare a letter setting out its views on the need for basic default governance provisions in the law governing unincorporated associations. The Commission indicated that it would consider pursuing the Committee’s suggestions, but would not delay preparation of the tentative recommendation to do so. The Committee has submitted its letter, but the staff has not yet had time to analyze its contents. The staff will prepare a memorandum presenting the letter for consideration at a future meeting.

The Commission needs to decide whether to approve circulation of the attached staff draft as a tentative recommendation, with or without any changes.

Respectfully submitted,

Brian Hebert
Staff Counsel
UNINCORPORATED ASSOCIATIONS

Many private associations are not organized as corporations. These unincorporated associations include both for-profit and nonprofit groups (such as partnerships, social clubs, charitable groups, mutual aid societies, labor unions, political groups, and religious societies). While some unincorporated associations are legally sophisticated, others are small, informal groups, without legal counsel.

Historically, an unincorporated association was not considered to be a legal entity separate from its members. Instead, it was treated as an aggregation of individuals. An unincorporated association could not own or transfer property and could not sue or be sued in its own name. In addition, members of an unincorporated association could be held jointly and severally liable for the liabilities of the group.

In 1996, the National Conference of Commissioners on Uniform State Laws adopted the Uniform Unincorporated Nonprofit Association Act ("Uniform Act") to address some of the problems that result from the historic view of unincorporated associations. The Uniform Act is narrow in its scope, focusing on three basic subjects: "authority to acquire, hold, and transfer property, especially real property; authority to sue and be sued as an entity; and contract and tort liability of officers and members of the association." The Law Revision Commission has conducted a study to determine whether the Uniform Act should be adopted in California. The Commission recommends against adoption of the Uniform Act. Most of the issues addressed in the Uniform Act are already addressed by California law, in a manner that is consistent with the general thrust of the Uniform Act’s reforms. Many of the existing improvements to the law governing unincorporated associations in California were enacted on the recommendation of the Law Revision Commission, after careful study. Adoption of the Uniform Act would disrupt existing law without offering any significant offsetting benefit.

However, the law governing unincorporated associations could be improved by a number of further substantive reforms and by reorganizing existing law to improve its clarity and accessibility. The Commission recommends the revisions described below.

---

1. "Associations ... are not bodies politic or corporations, nor are they recognized by the law as persons. They are mere aggregates of individuals, called for convenience, like partnerships, by a common name." Grand Grove of United Ancient Order of Druids of California v. Garibaldi Grove, 130 Cal. 116 (1900).


4. See Suit by or Against an Unincorporated Association, 8 Cal. L. Revision Comm’n 901 (1966); Service of Process on Unincorporated Associations, 8 Cal. L. Revision Comm’n 1403 (1967); Service of Process on Unincorporated Associations, 13 Cal. L. Revision Comm’n 1657 (1976).
ORGANIZATION OF PROPOSED LAW

Existing law is not well organized. General provisions governing all unincorporated associations are intermingled with provisions relating only to nonprofit associations, or unique to a particular type of association (i.e., a fraternal society, nonprofit medical association, joint stock association, or real estate investment trust).

The proposed law would reorganize existing law into a more coherent scheme, with separate parts for general provisions, provisions affecting nonprofit associations, and provisions affecting business associations. Important terms would be defined and existing definitions would be refined to improve the clarity of the law and simplify the drafting of new provisions. One goal of the proposed reorganization is to make the law more accessible to lay persons who serve as members or officers of unincorporated associations.

RELATION TO OTHER LAW

The proposed law includes provisions detailing its relation to other law. Corporations, government entities, partnerships, and limited liability companies are expressly excluded from application of the proposed law. Those entities are subject to comprehensive regulation by other statutes. The proposed law also includes a provision subordinating it to any inconsistent statute governing a specific type of association. Thus, the proposed law would provide a default that applies to the extent an association is not governed by other law.

PROPERTY POWERS

Existing law provides that an unincorporated association can own and transfer property in its own name. The proposed law would simplify the existing provisions relating to property ownership and transfer.

The proposed law would add a provision governing the disposition of an unincorporated association’s assets on dissolution of the association. In general, it provides for disposition first pursuant to the doctrine of charitable trusts. If the association is not a charitable trust, the assets are distributed according to any applicable governing documents. If there are no applicable governing documents, the assets are divided pro rata among the existing members. This is consistent with case law and is similar to the Uniform Act.

5. See proposed Corp. Code § 18055 infra.
6. See proposed Corp. Code § 18065 infra.
8. See proposed Corp. Code §§ 18105, 18110, 18115 infra.
9. See proposed Corp. Code § 18125 infra.
10. Holt v. Santa Clara County Sheriff’s Benefit Ass’n, 250 Cal. App. 2d 925, 932, 59 Cal. Rptr. 180, 185 (1967) (“It is the general rule that upon the dissolution of a voluntary association its property should be
Under the proposed law, a creditor of a dissolved unincorporated association could recover assets distributed to members within four years after distribution. That is analogous to the right of a creditor of a dissolved nonprofit corporation to recover assets distributed on dissolution.

PERSONAL LIABILITY FOR OBLIGATION OF NONPROFIT ASSOCIATION

Contract Liability

In Security First National Bank of Los Angeles v. Cooper, the court held that a person is not liable for a contractual obligation of an unincorporated association merely because the person is a member of the association. However, a member is liable if the member “expressly or impliedly authorizes or ratifies the contract.” In that case, authorization of a lease was inferred from the fact that members had signed the association’s bylaws.

In direct response to that decision, the Legislature enacted three rules that limit the liability of a member of a nonprofit association. Under these rules: (1) a member is not individually liable for an association debt or obligation relating to real property; (2) no presumption or inference of consent or agreement to a nonprofit association incurring an obligation may be drawn from the fact that a person is a member of the association or has signed its bylaws; and (3) a member can only assume responsibility for an association obligation in a signed writing that identifies the specific contract for which responsibility is assumed.

These rules are both too broad and too narrow — too broad because they seem to preclude member liability on a real property contract even where liability should properly be imposed (e.g., where the member has expressly assumed responsibility for the contract); too narrow because the principal limit on liability only applies to a limited class of contracts (e.g., a member would not be shielded from personal liability for a contract to purchase a vehicle).

The proposed law would replace existing statutory limits on contract liability with a more comprehensive and generally applicable set of rules:

distributed pro-rata among its members unless otherwise provided by its constitution or by-laws.”) (citations omitted). See also Lynch v. Spilman, 67 Cal. 2d 251, 260, 431 P.2d 636, 642, 62 Cal. Rptr. 12, 18 (1967) (“property transferred to a corporation or other institution organized for a charitable purpose without a declaration of the use to which the property is to be put, is received and held by it “in trust to carry out the objects for which the organization was created.””) (citations omitted).

12. See proposed Corp. Code § 18130 infra.
(1) A judgment against a nonprofit association would be enforced first against the assets of the association, before the assets of an individual member, officer, or agent could be reached.\(^\text{18}\)

(2) A member, officer, or agent of a nonprofit association would not be personally liable for a debt, obligation, or liability of the association solely by reason of being a member, officer, or agent.\(^\text{19}\)

(3) A member of a nonprofit association could be held personally liable if the member expressly assumes liability, expressly authorizes or ratifies the contract, or with knowledge of the contract, personally receives benefits under the contract. Liability on the basis of a received benefit would be limited to the value of the benefit received.\(^\text{20}\)

(4) An officer or agent of a nonprofit association could be held personally liable if the officer or agent expressly assumes liability, executes the contract without disclosing that the officer or agent is acting as an officer or agent of the association, or executes the contract without authority to do so.\(^\text{21}\) The latter two grounds for liability are specific applications of general agency law.\(^\text{22}\)

In addition, the proposed law expressly applies the alter ego doctrine to nonprofit associations, to prevent fraudulent use of the nonprofit association form as a shield against personal liability.\(^\text{23}\) This is consistent with the law governing recovery of assets distributed by a dissolved nonprofit corporation.\(^\text{24}\)

Under these rules, the association itself would be primarily responsible for its own contractual obligations. However, if the association lacks the resources to satisfy its obligations under the contract, responsibility would fall on those members who approved the contract.

**Tort Liability**

In *Orser v. George*,\(^\text{25}\) the court considered whether the members of an unincorporated hunting club were liable for one member’s accidental shooting of a non-member. The court noted:

> It has been held that an unincorporated association is bound to use the same care as a natural person; but that mere membership does not make all members liable for unlawful acts of other members without their participation, knowledge

---

18. See proposed Corp. Code § 18635 *infra*.
19. See proposed Corp. Code § 18605 *infra*.
20. See proposed Corp. Code § 18610 *infra*.
21. See proposed Corp. Code § 18615 *infra*.
23. See proposed Corp. Code § 18630 *infra*.
or approval. Vicarious liability may exist, however, based upon … personal 
participation in an unlawful activity or setting it in motion.\textsuperscript{26}

In \textit{Steuer v. Phelps},\textsuperscript{27} the court considered whether the members of a very small 
church group, with no officers or management, were liable for one member’s 
negligence while driving on group business. The court noted:

There is evidence that each individual member, rather than an officer, manager, 
or committee, participated directly in entrusting the car to Mrs. Henry to operate 
exclusively for purposes of the association. Under the doctrine of respondeat 
superior, it is elemental that one who entrusts another with the operation of his 
automobile is liable for the negligent operation of the vehicle, even though he 
neither authorized nor approved the driving in a negligent manner. … Mere 
authorization to Mrs. Henry to operate the car fastens liability upon the individual 
members who gave that authorization.\textsuperscript{28}

Thus, under existing law, it appears that a member of a nonprofit association 
may be vicariously liable for the tortious conduct of an agent or other member of 
the association, if the member personally participates in the tort (in which case the 
member is probably liable for the member’s own conduct, rather than vicariously 
liable for the agent’s conduct), or authorizes or “sets in motion” the agent’s 
actions.

Generally, the law does not hold a person liable for the wrongs of another. 
However, vicarious liability has been justified as a deliberate allocation of risk to 
the party best able to bear it:

Although earlier authorities sought to justify the respondeat superior doctrine on 
such theories as “control” by the master of the servant, the master’s “privilege” in 
being permitted to employ another, the third party’s innocence in comparison to 
the master’s selection of the servant, or the master’s “deep pocket” to pay for the 
loss, “the modern justification for vicarious liability is a rule of policy, a 
deliberate allocation of a risk. The losses caused by the torts of employees, which 
as a practical matter are sure to occur in the conduct of the employer’s enterprise, 
are placed upon that enterprise itself, as a required cost of doing business. They 
are placed upon the employer because, having engaged in an enterprise which 
will, on the basis of past experience, involve harm to others through the torts of 
employees, and sought to profit by it, it is just that he, rather than the innocent 
injured plaintiff, should bear them; and because he is better able to absorb them, 
and to distribute them, through prices, rates or liability insurance, to the public, 
and so to shift them to society, to the community at large.”\textsuperscript{29}

This rationale is less persuasive when the principal is a nonprofit group, which 
does not “profit” by its activity and has little opportunity to spread risk to society

\textsuperscript{26} \textit{Id.} at 670-71.
\textsuperscript{27} 41 Cal. App. 3d 468 (1974).
\textsuperscript{28} \textit{Id.} at 472.
at large by raising prices on goods or services. Extending vicarious liability to individual members of the group would be even harder to justify.

The proposed law would preclude personal liability of a member, officer, or agent of a nonprofit association for the torts of an agent or member of the association unless (1) the member, officer, or agent expressly assumes liability for the any injury caused by the activity, or (2) the tortious conduct of the member, officer, or agent causes the injury. In other words, a member, officer, or agent of a nonprofit association would not be vicariously liable for the torts of the association.

Note that the proposed application of the alter ego doctrine to nonprofit associations would extend to tort liability as well as contract liability.

DESIGNATION OF AGENT FOR SERVICE OF PROCESS

Corporations Code Section 24003 authorizes any unincorporated association, including a partnership or other for-profit association, to file a statement with the Secretary of State designating an agent for service of process. In addition, most statutes governing specific types of for-profit associations include equivalent agent designation procedures.

However, there is equivalent provision applicable to a general partnership, other than Section 24003. This is potentially a problem, because the proposed law would provide that the unincorporated associations law does not apply to a partnership. To ensure that a general partnership can continue to designate an agent for service of process, the proposed law would add a provision specifically authorizing a partnership to designate an agent.

The proposed law also includes technical revisions to reflect the fact that there are various alternative provisions authorizing designation of an agent.

ASSOCIATION GOVERNANCE

The proposed law reserves a chapter for possible default rules relating to the governance of an unincorporated association. The Commission is currently considering suggestions that the proposed law should include basic default provisions on such matters as the standard of conduct of governing boardmembers, amendment of governing documents, termination of memberships, mergers, and

30. See proposed Corp. Code § 18620 infra.
31. See proposed Corp. Code § 18630 infra.
32. See, e.g., Corp. Code §§ 15621(a)(4) (limited partnership), 16953(a)(3) (limited liability partnership), 17051(a)(4) & 17060(a)(2) (limited liability company).
33. See proposed Corp. Code § 18055 infra.
34. See proposed Corp. Code §§ 16309-16310 infra.
dissolution. The Commission welcomes comments on whether there is a need for such provisions.
Contents

PROPOSED LEGISLATION
Corp. Code §§ 18000-18816 (added). Unincorporated associations ..................... 3

TITLE 3. UNINCORPORATED ASSOCIATIONS ......................................................... 3

PART 1. GENERAL PROVISIONS ........................................................................... 3

CHAPTER 1. DEFINITIONS .................................................................................. 3
§ 18000. Application of definitions ................................................................. 3
§ 18005. “Governing document” defined ........................................................... 3
§ 18010. “Member” defined .............................................................................. 3
§ 18015. “Nonprofit association” defined ........................................................... 4
§ 18020. “Person” defined ................................................................................. 4
§ 18025. “Unincorporated association” defined .................................................. 4

CHAPTER 2. APPLICATION OF TITLE ................................................................ 5
§ 18050. Group subject to title for reasons of fairness ...................................... 5
§ 18055. Exempt entities ................................................................................... 5
§ 18060. Relation to other law .......................................................................... 5
§ 18065. Relation to law of agency .................................................................... 5

CHAPTER 3. PROPERTY ...................................................................................... 6
§ 18100. Membership interest is personal property .......................................... 6
§ 18105. Property powers .................................................................................. 6
§ 18108. Association property ......................................................................... 6
§ 18110. Execution of real property acquisition, transfer, or encumbrance ........... 6
§ 18115. Statement of authority ....................................................................... 7
§ 18120. Limit on assertion of unauthorized action ........................................... 7
§ 18125. Disposition of assets of dissolved association ....................................... 8
§ 18130. Recovery of distributed assets ............................................................ 8

CHAPTER 4. DESIGNATION OF AGENT FOR SERVICE OF PROCESS ............... 9
§ 18200. Statement of unincorporated association ............................................ 9
§ 18201. Numbering, filing, and indexing of statements .................................... 10
§ 18202. Revocation or resignation of agency .................................................... 11
§ 18203. Notice of expiration .......................................................................... 11
§ 18204. Service of process on unincorporated associations in certain cases ......... 11

CHAPTER 5. LIABILITY ...................................................................................... 12
§ 18250. Liability of unincorporated association ............................................... 12

CHAPTER 6. GOVERNANCE [RESERVED] ....................................................... 12

PART 2. NONPROFIT ASSOCIATIONS ............................................................... 12

CHAPTER 1. LIABILITY ....................................................................................... 12
§ 18605. No liability based solely on membership or agency ............................... 12
§ 18610. Contract liability of member of nonprofit association ............................ 13
§ 18615. Contract liability of officer or agent of nonprofit association ................ 14
§ 18620. Tort liability ....................................................................................... 14
§ 18630. Alter ego liability of member of nonprofit association ......................... 15
§ 18635. Enforcement of judgment against nonprofit association ....................... 16
§ 18640. Fraudulent transfers ........................................................................... 16

CHAPTER 2. INSIGNIA ....................................................................................... 16
§ 18700. “Insignia” defined .............................................................................. 16
§ 18701. Registration of name or insignia ......................................................... 17
§ 18702. Deceptively similar name or insignia ................................................... 17
§ 18703. Application for registration, alteration, or cancellation ......................... 17
§ 18704. Fee ..................................................................................................... 17
§ 18705. Certificate of registration ................................................................. 17
$ 18706. Indexed record of registrations .............................................. 18
$ 18707. Unauthorized use of registered name or insignia .......................... 18
$ 18708. Injunction to restrain unauthorized use of name or insignia ................. 18
$ 18709. Damages recoverable in addition to injunctive relief ....................... 18
$ 18710. Evidence of unlawful use of name or insignia ................................ 19

CHAPTER 3. DEATH BENEFIT PAYMENTS BY FRATERNAL SOCIETIES ............. 19
$ 18750. Payment of benefits in excess of burial expenses of member .............. 19
$ 18751. Liability of society for burial expenses ...................................... 19

CHAPTER 4. NONPROFIT MEDICAL ASSOCIATIONS ................................ 19
Article 1. Definitions .............................................................................. 19
$ 18800. “Nonprofit medical association” defined .................................... 19
Article 2. Member Liability .................................................................... 20
$ 18805. Liability of member of nonprofit medical association ...................... 20
Article 3. Director and Officer Liability .................................................. 20
$ 18810. Finding and declaration .............................................................. 20
$ 18811. Liability limited .......................................................................... 20
$ 18812. Exceptions ................................................................................ 21
$ 18813. Tax exempt status ........................................................................ 21
$ 18814. Liability insurance ...................................................................... 21
$ 18815. Nondiscrimination ...................................................................... 22
$ 18816. Liability of association .................................................................. 22

PART 3. BUSINESS ASSOCIATIONS ......................................................... 22
CHAPTER 1. JOINT STOCK ASSOCIATIONS ........................................... 22
$ 18900. Unauthorized use of name in advertising ....................................... 22
$ 18901. False statements ......................................................................... 23
$ 18902. Fraudulent documents and accounts ............................................. 23
$ 18903. Presumption of directors’ knowledge of association affairs .......... .... 23

CHAPTER 2. REAL ESTATE INVESTMENT TRUSTS .................................. 24
$ 18950. “Real estate investment trust” defined ......................................... 24
$ 18951. Nonliability of shareowners ......................................................... 24
$ 18952. Claims ..................................................................................... 24
$ 18953. Prohibition against issuance of security redeemable at holder’s option .... 24
$ 18954. Application of Section 18951 ........................................................ 25
$ 18955. Bankruptcy ................................................................................ 25
$ 18956. Merger ..................................................................................... 25

CONFORMING REVISIONS
Code Civ. Proc. § 395.2 (amended). Place of trial in action against unincorporated association ......................................................... 26
Code Civ. Proc. § 695.080 (added). Enforcement of money judgment against unincorporated association ........................................ 27
Corp. Code § 16202 (amended). Formation of partnership ............................ 27
Corp. Code § 16309 (added). Designation of agent for service of process ......... 28
Corp. Code § 16310 (added). Service of process on designated agent ................ 28
PROPOSED LEGISLATION

Corp. Code §§ 18000-18816 (added). Unincorporated associations
SEC. ___. Title 3 (commencing with Section 18000) is added to the
Corporations Code, to read:

TITLE 3. UNINCORPORATED ASSOCIATIONS

PART 1. GENERAL PROVISIONS

CHAPTER 1. DEFINITIONS

§ 18000. Application of definitions
18000. Unless the provision or context otherwise requires, the definitions in this
chapter govern the construction of this title.

Comment. Section 18000 is new.

§ 18005. “Governing document” defined
18005. “Governing document” means a constitution, articles of association,
bylaws, or other writing that governs the purpose or operation of an
unincorporated association or the rights or obligations of its members.

Comment. Section 18005 is new.

See also Sections 8 (“writing” defined), 18010 (“member” defined), 18025 (“unincorporated
association” defined).

§ 18010. “Member” defined
18010. (a) If the governing documents of an unincorporated association define
the membership of the association, “member” has the meaning provided in the
governing documents.
(b) If the governing documents of an unincorporated association do not define
the membership of the association, “member” means a person who, under the rules
or practices of the unincorporated association, may participate in the selection of
persons authorized to manage the affairs of the unincorporated association or in
the development of policy of the unincorporated association, but does not include
a person who participates solely as an agent of the association.

Comment. Section 18010 is new.
Subdivision (a) recognizes the authority of an unincorporated association to determine its own
membership requirements. Nothing in this subdivision is intended to authorize unlawful
discrimination by an unincorporated association in its membership policy.
Subdivision (b) is similar to Section 1(1) of the Uniform Unincorporated Nonprofit Association
Act (1996). However, subdivision (b) adds an exception for a person who participates in
association decisionmaking solely as an agent of the association. This does not preclude an agent
from being a member, if the agent qualifies as a member for other reasons. For example, if an
association hires a consultant to assist in developing association policy, the consultant’s
involvement in policy development does not make the consultant a member of the association. The fact that the consultant is serving as an agent of the association does not prevent the consultant from also being a member of the association under the association’s general membership rules and practices.

See also Sections 18005 (“governing document” defined), 18020 (“person” defined), 18025 (“unincorporated association” defined).

§ 18015. “Nonprofit association” defined

18015. (a) “Nonprofit association” means an unincorporated association with a primary common purpose other than operating a business for profit.

(b) A nonprofit association may carry on a business for profit if any profit that results from the business activity is applied to the primary purpose of the association.

Comment. Subdivision (a) of Section 18015 defines “nonprofit association” for the purpose of this title. See Section 18025 (“unincorporated association” defined). Cf. Sections 16101(7), 16202 (“partnership” defined). Unincorporated associations organized primarily to carry on a business for profit include a business trust, real estate investment trust, and joint stock association.

Subdivision (b) recognizes that a nonprofit entity may carry on for-profit activity in service of its primary purpose. See, e.g., Section 5140(l) (powers of nonprofit public benefit corporation).

See also Section 18025 (“unincorporated association” defined).

§ 18020. “Person” defined

18020. ”Person” includes a natural person, corporation, partnership or other unincorporated organization, government or governmental subdivision or agency, or any other entity.

Comment. Section 18020 continues and generalizes former Section 24000(b).

§ 18025. “Unincorporated association” defined

18025. (a) “Unincorporated association” means an unincorporated organization of two or more persons joined by mutual consent for a common lawful purpose and operating under a common name.

(b) Joint tenancy, tenancy in common, community property, or other form of property tenure does not by itself establish an unincorporated association, even if coowners share ownership of the property for a common purpose.

(c) Marriage or creation of a registered domestic partnership does not by itself establish an unincorporated association.

Comment. Section 18025 is similar to Section 1(2) of the Uniform Unincorporated Nonprofit Association Act (1996). The requirement that an organization operate under a common name is drawn from Barr v. United Methodist Church, 90 Cal. App. 3d 259, 266 (1979) (“The criteria applied to determine whether an entity is an unincorporated association are no more complicated than (1) a group whose members share a common purpose, and (2) who function under a common name under circumstances where fairness requires the group be recognized as a legal entity.”).

Subdivision (c) makes clear that marriage or creation of a registered domestic partnership does not by itself create an unincorporated association. This does not prevent spouses or domestic partners from forming an unincorporated association for any purpose beyond the purposes inherent in marriage or registered domestic partnership.
See also Sections 18020 ("person" defined), 18050 (group subject to title for reasons of fairness), 18055 (exempt entities), 18060 (relation to other law).

CHAPTER 2. APPLICATION OF TITLE

§ 18050. Group subject to title for reasons of fairness

18050. Where fairness requires, a court may treat an unincorporated organization as an unincorporated association under this title.

Comment. Section 18050 recognizes that fairness may require that a group be subject to this title, whether or not it meets the definition of an "unincorporated association." See Barr v. United Methodist Church, 90 Cal. App. 3d 259, 267-68 (1979) ("Fairness includes those situations where persons dealing with the association contend their legal rights have been violated. Formalities of quasi-corporate organization are not required."). Fairness may require providing an unincorporated organization and its members, officers, or agents with the benefits provided by this title, as well as protecting others who deal with or have claims against the organization or its members, officers, or agents.

See also Section 18025 ("unincorporated association" defined).

§ 18055. Exempt entities

18055. This title does not apply to any of the following groups:

(a) A corporation.
(b) A government or governmental subdivision or agency.
(c) A partnership.
(d) A limited liability company.

Comment. Section 18055 lists entities that are not subject to this title because they are governed by other law. Subdivision (b) is drawn from former Section 24000.

§ 18060. Relation to other law

18060. If a statute that is specific to a particular type of unincorporated association is inconsistent with a provision of this title, the specific statute prevails to the extent of the inconsistency.

Comment. Section 18060 is new. It makes clear that the general provisions of this title are subordinate to entity-specific statutes. For example, Section 18105 authorizes an unincorporated association to own property. Insurance Code Section 9089 provides a more restrictive property ownership rule specific to fraternal fire insurers. An unincorporated fraternal fire insurer would be subject to both sections. To the extent they are inconsistent, Insurance Code Section 9089 would prevail.

See also Section 18025 ("unincorporated association" defined).

§ 18065. Relation to law of agency

18065. Except where this title provides a specific rule, the general law of agency, including Article 2 (commencing with Section 2019) of Chapter 2 of Title 6 of, and Title 9 (commencing with Section 2295) of, Part 4 of Division 3 of the Civil Code, applies to an unincorporated association.

Comment. Section 18065 makes clear that the general law of agency applies to an unincorporated association.
See also Sections 18025 (“unincorporated association” defined), 18615 (contract liability of agent of nonprofit association), 18620 (tort liability).

CHAPTER 3. PROPERTY

§ 18100. Membership interest is personal property

18100. The interest of a member of an unincorporated association is personal property.

Comment. Section 18100 continues former Section 20000 without change.

See also Sections 18010 (“member” defined), 18025 (“unincorporated association” defined).

§ 18105. Property powers

18105. An unincorporated association in its name may acquire, hold, manage, encumber, or transfer an interest in real or personal property.

Comment. Section 18105 continues the substance of former Section 20001, except that the limitation on the permissible purpose for which property is acquired, held, managed, encumbered, or transferred is not continued. Under this section, an unincorporated association has all of the powers granted under former Section 20001, including the power to “purchase, receive, own, hold, lease, mortgage, pledge, or encumber, by deed of trust or otherwise, manage, and sell” property.

See also Section 18025 (“unincorporated association” defined).

Note. Language limiting the property powers of an unincorporated association to those necessary for its “business purposes and objects” has not been continued in proposed Section 18105. The Commission would like to receive comments on whether that limitation should be continued.

§ 18108. Association property

18108. Property acquired by an unincorporated association is property of the unincorporated association and not of the members individually, regardless of how title is held.

Comment. Section 18108 is new.

See also Sections 18010 (“member” defined), 18025 (“unincorporated association” defined).

§ 18110. Execution of real property acquisition, transfer, or encumbrance

18110. The acquisition, transfer, or encumbrance of an interest in real property by an unincorporated association shall be executed by its president and secretary or other comparable officers, or by a person specifically designated by a resolution duly adopted by the association or by a committee or other body duly authorized to act by the governing instruments of the association.

Comment. Section 18110 continues the first paragraph of former Section 20002 without substantive change, except that the special, more restrictive, rule for fraternal or benevolent societies and labor organizations has not been continued. These organizations are now subject to the same rule as any other form of unincorporated association.

See also Section 18020 (“person” defined), 18025 (“unincorporated association” defined).
§ 18115. Statement of authority

18115. (a) An unincorporated association may record in any county in which it has an interest in real property a verified and acknowledged statement, or a certified copy of a statement recorded in another county, stating the name of the association, and the names, title, or capacity of its officers and other persons who are authorized on its behalf to acquire, transfer, or encumber real property owned or held by the association. A statement recorded under this section revokes any prior statement recorded under this subdivision.

(b) It shall be conclusively presumed in favor of a bona fide purchaser or encumbrancer for value of real property of the association located in the county in which a statement or certified copy has been recorded pursuant to subdivision (a), that the officers and persons designated in the statement are duly authorized to acquire, transfer, or encumber real property.

(c) The presumption in subdivision (b) does not apply if either of the following occurs before the transaction at issue is completed:

1. The statement is revoked.
2. A person claiming to be a member of the association records a verified and acknowledged statement that states the name of the association, particularly identifies the recorded statement of the unincorporated association, and states that the previously recorded statement was recorded without authority or that the officers or other persons designated therein are not so authorized.

Comment. Section 18115 continues the substance of the second paragraph of former Section 20002. The second sentence of subdivision (a) and subdivision (c)(1), relating to revocation of a statement, are new.

Former Section 20002 incorporated definitions set out in former Section 15010.5. The obsolete definitions have not been continued.

See also Sections 18010 (“member” defined), 18020 (“person” defined), 18025 (“unincorporated association” defined).

Note. Subdivision (c)(2) provides a mechanism for repudiation of a recorded statement of authority. Section 5 of the Uniform Unincorporated Nonprofit Association Act (1996), which is analogous to proposed Section 18115 does not contain such a provision. Section 16303 provides for filing of a statement of partnership authority. It also lacks a “repudiation” provision. Is such a provision actually useful or should it be deleted as unnecessarily complicating the law?

§ 18120. Limit on assertion of unauthorized action

18120. No limitation on the power of an unincorporated association to acquire, hold, manage, pledge, encumber, or transfer an interest in real or personal property, or the manner of exercise of those powers, shall be asserted as between the unincorporated association or a member of the unincorporated association and a third person, except in the following proceedings:

(a) A proceeding to enjoin an unauthorized act, or the continuation of an unauthorized act, where a third person has not yet acquired rights that would be adversely affected by the injunction, or where, at the time of the unauthorized act, the third person had actual knowledge that the act was unauthorized.

[(b) A proceeding to dissolve the unincorporated association.]
(c) A proceeding against an officer or agent of the unincorporated association for violation of the officer’s authority.

Comment. Section 18120 is drawn from Section 208(a). It protects third parties from claims that an action of an unincorporated association is unauthorized or improperly executed.

See also Sections 18010 (“member” defined), 18025 (“unincorporated association” defined).

Note. Subdivision (b) is bracketed to reflect uncertainty as to the nature of any as yet undrafted rules governing dissolution of an unincorporated association.

§ 18125. Disposition of assets of dissolved association

18125. After all of the known debts and liabilities of an unincorporated association in the process of winding up its affairs have been paid or adequately provided for, the assets of the association may be distributed as follows:

(a) Assets that are held in trust shall be distributed in accordance with the trust.

(b) Assets that are not held in trust shall be distributed in accordance with the governing documents of the association. If the governing documents do not provide the manner of distribution of the assets, they shall be distributed pro rata to the current members of the association.

Comment. Section 18125 is new. It provides rules for distribution of assets of a dissolving unincorporated association that remain after the association has satisfied its known debts and liabilities.

Subdivision (a) governs distribution of assets held in charitable trust. See Lynch v. Spilman, 67 Cal. 2d 251, 260, 431 P.2d 636, 642, 62 Cal. Rptr. 12, 18 (1967) (“property transferred to a corporation or other institution organized for a charitable purpose without a declaration of the use to which the property is to be put, is received and held by it ‘in trust to carry out the objects for which the organization was created.’”) (citations omitted).

Subdivision (b) governs assets that are not subject to a trust. It is consistent with the holding in Holt v. Santa Clara County Sheriff’s Benefit Ass’n, 250 Cal. App. 2d 925, 932, 59 Cal. Rptr. 180, 185 (1967) (“It is the general rule that upon the dissolution of a voluntary association its property should be distributed pro-rata among its members unless otherwise provided by its constitution or by-laws.”) (citations omitted).

Section 18060 provides that a statute specific to a particular type of unincorporated association prevails over a provision of this title, to the extent of any inconsistency. Accordingly, any statutory rule governing disposition of the property of a dissolved cemetery association would prevail over provisions of this section, to the extent of any inconsistency. See, e.g., Health & Safety Code §§ 7925 (limitation on proceeds of sale of cemetery land), 8825-8829 (dedication of pioneer memorial park).

See also Sections 18005 (“governing document” defined), 18010 (“member” defined), 18025 (“unincorporated association” defined).

§ 18130. Recovery of distributed assets

18130. (a) Notwithstanding Section 18635, a cause of action against an unincorporated association may be enforced against a person who received assets distributed under Section 18125. Liability under this section shall be limited to the value of the assets distributed to the person or the person’s pro rata share of the claim against the unincorporated association, whichever is less.

(b) To enforce a cause of action under this section, a claimant must commence a proceeding to enforce the cause of action before expiration of the statute of
limitations applicable to the cause of action and within four years after dissolution of the unincorporated association.

Comment. Section 18130 is new.

See also Sections 18005 (“governing document” defined), 18010 (“member” defined), 18020 (“person” defined), 18025 (“unincorporated association” defined).

Note. Proposed Section 18130 is drawn from Corporations Code Section 8723. That section imposes a time limit for recovery of assets from a distributee, but creates an exception to the time limit for a quiet title action. The Commission would like to receive comments on whether such an exception should be added to Section 18130.

CHAPTER 4. DESIGNATION OF AGENT FOR SERVICE OF PROCESS

§ 18200. Statement of unincorporated association

18200. (a) An unincorporated association may file with the Secretary of State on a form prescribed by the Secretary of State a statement containing either of the following:

(1) A statement designating the location and complete address of the association’s principal office in this state. Only one such place may be designated.

(2) A statement (i) designating the location and complete address of the association’s principal office in this state in accordance with paragraph (1) or, if the association does not have an office in this state, designating the complete address of the association to which the Secretary of State shall send any notices required to be sent to the association under Sections 18202 and 18203, and (ii) designating as agent of the association for service of process any natural person residing in this state or any corporation that has complied with Section 1505 and whose capacity to act as an agent has not terminated.

(b) If a natural person is designated as agent for service of process, the statement shall set forth the person’s complete business or residence address. If a corporate agent is designated, no address for it shall be set forth.

(c) Presentation for filing of a statement and one copy, tender of the filing fee, and acceptance of the statement by the office of the Secretary of State constitutes filing under this section. The Secretary of State shall note upon the copy of the statement the file number and the date of filing the original and deliver or send the copy to the unincorporated association filing the statement.

(d) At any time, an unincorporated association that has filed a statement under this section may file a new statement superseding the last previously filed statement. If the new statement does not designate an agent for service of process, the filing of the new statement shall be deemed to revoke the designation of an agent previously designated. A statement filed under this section expires five years from December 31 following the date it was filed in the office of the Secretary of State, unless previously superseded by the filing of a new statement.

(e) Delivery by hand of a copy of any process against the unincorporated association (1) to any natural person designated by it as agent, or (2) if the
association has designated a corporate agent, to any person named in the last certificate of the corporate agent filed pursuant to Section 1505 at the office of the corporate agent shall constitute valid service on the association.

(f) For filing a statement as provided in this section, the Secretary of State shall charge and collect the fee prescribed in paragraph (1) of subdivision (b) of Section 12191 of the Government Code for filing a designation of agent.

(g) Notwithstanding Section 18055, a statement filed by a partnership under former Section 24003 is subject to this chapter until the statement is revoked or expires.

Comment. Section 18200 continues former Section 24003 without substantive change. Subdivision (g) is added as a transitional provision to make clear that this chapter applies to a statement filed by a partnership under former Section 24003, despite language in Section 18055 providing that this title does not apply to a partnership. See Sections 16309-16310 (partnership’s designation of agent for service of process).

See also Section 18025 (“unincorporated association” defined).

§ 18201. Numbering, filing, and indexing of statements

18201. (a) The Secretary of State shall mark each statement filed under Section 18200 with a consecutive file number and the date of filing. The Secretary of State may destroy or otherwise dispose of any such statement four years after the statement expires. In lieu of retaining the original statement, the Secretary of State may retain a copy thereof in accordance with Section 14756 of the Government Code.

(b) The Secretary of State shall index each statement filed under Section 18200 according to the name of the unincorporated association as set out in the statement and shall enter in the index the file number and the address of the association as set out in the statement and, if an agent for service of process is designated in the statement, the name of the agent and, if a natural person is designated as the agent, the address of that person.

(c) Upon request of any person, the Secretary of State shall issue a certificate showing whether, according to the records of the office of the Secretary of State, there is on file on the date and hour stated therein, any presently effective statement filed under Section 18200 for an unincorporated association using a specific name designated by the person making the request. If such a statement is on file, the certificate shall include the information required by subdivision (b) to be included in the index. The fee for the certificate is as set forth in Section 12182 of the Government Code.

(d) When a statement has expired under subdivision (d) of Section 18200, the Secretary of State shall enter that fact in the index together with the date of the expiration.

(e) Four years after a statement has expired, the Secretary of State may delete the information concerning that statement from the index.

Comment. Section 18201 continues former Section 24004 without substantive change. See also Section 18020 (“person” defined), 18025 (“unincorporated association” defined).
§ 18202. Revocation or resignation of agency

18202. (a) An agent designated by an unincorporated association for the service of process may file with the Secretary of State a written statement of resignation as agent which shall be signed and execution thereof shall be duly acknowledged by the agent. Thereupon the authority of the agent to act in such capacity shall cease and the Secretary of State forthwith shall give written notice of the filing of the statement by mail to the unincorporated association at its address as set out in the statement filed by the association.

(b) Any unincorporated association may at any time file with the Secretary of State a revocation of a designation of an agent for service of process. The revocation is effective when filed.

(c) Notwithstanding subdivisions (a) and (b), service made on an agent designated by an unincorporated association for service of process in the manner provided in subdivision (e) of Section 18200 is effective if made within 30 days after the statement of resignation or the revocation is filed in the office of the Secretary of State.

Comment. Section 18202 continues former Section 24005 without substantive change. See also Section 18025 (“unincorporated association” defined).

§ 18203. Notice of expiration

18203. Between the first day of October and the first day of December immediately preceding the expiration date of a statement filed under Section 18200, the Secretary of State shall send by first class mail a notice, indicating the date on which the statement will expire and the file number assigned to the statement, to the unincorporated association at its address as set out in the statement. Neither the failure of the Secretary of State to mail the notice as provided in this section nor the failure of the notice to reach the unincorporated association shall continue the statement in effect after the date of its expiration. Neither the state nor any officer or employee of the state is liable for damages for failure to mail the notice as required by this section.

Comment. Section 18203 continues former Section 24006 without substantive change. See also Section 18025 (“unincorporated association” defined).

§ 18204. Service of process on unincorporated associations in certain cases

18204. If designation of an agent for the purpose of service of process has not been made as provided in Section 18200, or if the agent designated cannot with reasonable diligence be found at the address specified in the index referred to in Section 18201 for delivery by hand of the process, and it is shown by affidavit to the satisfaction of a court or judge that process against an unincorporated association cannot be served with reasonable diligence upon the designated agent by hand or the unincorporated association in the manner provided for in Section 415.10 or 415.30 of the Code of Civil Procedure or subdivision (a) of Section 415.20 of the Code of Civil Procedure, the court or judge may make an order that
service be made upon the unincorporated association by delivery of a copy of the 
process to any one or more of the association’s members designated in the order 
and by mailing a copy of the process to the association at its last known address. 
Service in this manner constitutes personal service upon the unincorporated 
association.

Comment. Section 18204 continues former Section 24007 without substantive change.
See also Sections 18010 (“member” defined), 18025 (“unincorporated association” defined),

CHAPTER 5. LIABILITY

§ 18250. Liability of unincorporated association

18250. Except as otherwise provided by law, an unincorporated association is 
liable for its act or omission and for the act or omission of its officer, agent, or 
employee, acting within the scope of the office, agency, or employment, to the 
same extent as if the association were a natural person.

Comment. Section 18250(a) continues the substance of former Section 24001, with two 
exceptions:

(1) Language providing that former Section 24001 did not affect the liability of an association 
to a member of the association has not been continued. It is now clear that an unincorporated 
association may be liable to a member of the association. See Marshall v. ILWU, 57 Cal. 2d 781 
(1962) (member can sue labor union for negligent acts which member neither participated in nor 
authorized), White v. Cox, 17 Cal. App. 3d 824 (1971) (“unincorporated associations are now 
etitled to general recognition as separate legal entities and … as a consequence a member of an 
unincorporated association may maintain a tort action against his association.”).

(2) The phrase “except as otherwise provided by statute” has been broadened. Both statutory 
and common law limitations on the liability of an unincorporated association should govern. For 
example, in Lamden v. La Jolla Shores Clubdominium Homeowners Ass’n, 21 Cal. 4th 249 
(1999), the court held that courts should defer to a decision of a duly-constituted community 
association board, where the board, “upon reasonable investigation, in good faith, and with regard 
for the best interests of the community association and its members, exercises discretion within 
the scope of its authority under relevant statutes, covenants and restrictions to select among 
means for discharging an obligation to maintain and repair a development’s common areas.…”

Section 18250 does not override the rule stated in that case.

CHAPTER 6. GOVERNANCE [RESERVED]

PART 2. NONPROFIT ASSOCIATIONS

CHAPTER 1. LIABILITY

§ 18605. No liability based solely on membership or agency

18605. A member, officer, or agent of a nonprofit association is not personally 
liable for a debt, obligation, or liability of the association solely by reason of being 
a member, officer, or agent.

Comment. Section 18605 codifies the general rule that a member of an unincorporated 
nonprofit association is not personally liable for the association’s debts, obligations, or liabilities 
solely by reason of membership. See Security First National Bank of Los Angeles v. Cooper, 62
Cal. App. 2d 653, 667 (1945) (“membership, as such, imposes no personal liability for the debts of the association”); Orser v. George, 252 Cal. App. 2d 660, 670 (1967) (“mere membership does not make all members liable for unlawful acts of other members without their participation, knowledge or approval”).

The general rule has been extended to officers and agents of an association. This is consistent with existing law providing that an agent is not liable for obligations of a disclosed principal or for torts of the principal, where the agent is personally innocent of wrongdoing. See 2 B. Witkin, Summary of California Law Agency § 145, at 141, § 151, at 145 (9th ed. 1987).

See also Sections 18010 (“member” defined), 18015 (“nonprofit association” defined),

§ 18610. Contract liability of member of nonprofit association

18610. A member of a nonprofit association may not be held personally liable for a contractual obligation of the association, except in one of the following circumstances:

(a) The member expressly assumes personal responsibility for the obligation.

(b) The member expressly authorizes or ratifies the specific contract.

(c) With notice of the contract, the member receives a benefit under the contract.

Liability under this subdivision is limited to the value of the benefit received.

Comment. Section 18610 is new. It specifies the scope of personal liability of a member of a nonprofit association for a contractual obligation of the association.

Subdivision (a) provides that a member may be liable where the member has personally guaranteed a debt or otherwise assumed responsibility for a contract. A promise to answer for the debt of another is subject to the statute of frauds. Civ. Code § 1624(a)(2).

Subdivision (b) is consistent with the common law rule that a member of a nonprofit association may be personally liable for a contractual obligation that the member has expressly authorized or ratified. See Security First National Bank of Los Angeles v. Cooper, 62 Cal. App. 2d 653 (1944). Subdivision (b) does not continue the common law rule that a member may be liable for a contract that the member has impliedly authorized or ratified. Authorization and ratification may not be inferred from mere participation in the governance of the association — express approval of the contract is required. For example, approval of by-laws, election of officers, or participation in a vote in which the member votes against authorization or ratification of a contract would not constitute express authorization or ratification of a contract.

See also Sections 18010 (“member” defined), 18015 (“nonprofit association” defined),

Note. Proposed Section 18610 would not continue existing Section 21100, which provides that a member of an unincorporated nonprofit association is not “individually or personally liable for debts or liabilities contracted or incurred by the association in the acquisition of lands or leases or the purchase, leasing, designing, planning, architectural supervision, erection, construction, repair, or furnishing of buildings or other structures, to be used for the purposes of the association.”

It is not clear what purpose is served by this exemption — why should these types of debts and liabilities be treated differently from others? At the time of enactment the distinction was criticized by the Legislative Counsel (Wood, Report on Assembly Bill No. 356 4-5 (April 21, 1945) (on file with the Commission)):

Those creditors who had contracts of the kinds described in the bill would have a more restricted recourse to members’ property than would those creditors who sold food, an aircraft, a ship or furnishings for it, or musical instruments for a band, or who performed the services of secretaries, janitors or clergymen.

…

I have not been able to conceive of a state of facts that would show that the classification of debts and liabilities contained in the bill is founded on a natural, intrinsic or constitutional
distinction which reasonably justifies different treatment from that which would be given to debts and liabilities not mentioned in it; although I freely admit that it is hypothetically possible that a court might find such a distinction. It is my opinion that grave doubt exists as to whether a court would find the proposed legislation to be constitutional as far as the classification affects it.

The Commission would like to receive input on whether Section 21100 should be continued, and if so, why.

§ 18615. Contract liability of officer or agent of nonprofit association

18615. An officer or agent of a nonprofit association may be held personally liable for a contractual obligation of the nonprofit association if the officer or agent does any of the following:

(a) Expressly assumes personal responsibility for the obligation.
(b) Executes the contract without disclosing that the officer or agent is acting as an officer or agent of the association.
(c) Executes the contract without authority to execute the contract.

Comment. Section 18615 is new. This section states bases for the liability of an officer or agent of a nonprofit association. Liability of an officer or agent of a nonprofit association is governed by the general law of agency. See Section 18065.

Subdivision (a) provides that an officer or agent may be liable where the officer or agent has personally guaranteed a debt or otherwise assumed responsibility for a contract. A promise to answer for the debt of another is subject to the statute of frauds. Civ. Code § 1624(a)(2).

Subdivision (b) is consistent with existing law providing that an agent is not liable for a contract entered into on behalf of a disclosed principal. See 2 B. Witkin, Summary of California Law Agency §§ 145-48, at 141-44 (9th ed. 1987).

Subdivision (c) provides that an officer or agent may be liable for a contract executed on behalf of an association if the officer or agent lacks authority to execute the contract. See Civ. Code §§ 2342 (warranty of authority), 2343(2) (bad faith representation of authority), 2 B. Witkin, Summary of California Law Agency §§ 144-45, at 141-42 (9th ed. 1987).

See also Section 18015 (“nonprofit association” defined).

§ 18620. Tort liability

18620. A member, officer, or agent of a nonprofit association may not be held personally liable for an injury caused by an act or omission of the association or an act or omission of an officer or agent of the association, except in either of the following circumstances:

(a) The member, officer, or agent expressly assumes liability for any injury caused by particular conduct and that conduct causes the injury.
(b) The tortious conduct of the member, officer, or agent causes the injury.

Comment. Section 18620 is new. It specifies the scope of personal liability of a member, officer, or agent of a nonprofit association for a tort of the association or of an officer or agent of the association.

See also Sections 18010 (“member” defined), 18015 (“nonprofit association” defined), 18019 (“nonprofit association’s members” defined).

Note. The proposed law does not continue Section 21100, which provides that a member of a nonprofit association is not personally liable for debts or liabilities contracted or incurred in connection with specified real property matters. Although Section 21100 was enacted in response to a case involving contractual liability, as drafted it also limits liability for torts relating to the specified real property transactions. The Commission would like to receive input on whether
there is good justification for such an exemption. See discussion in the note following proposed
Section 18610.

§ 18630. Alter ego liability of member of nonprofit association

18630. Notwithstanding any other provision of this chapter, a member of a
nonprofit association may be personally liable for a debt, obligation, or liability of
the association under common law principles governing alter ego liability of
shareholders of a corporation, taking into account differences in form between a
nonprofit association and a corporation.

Comment. Section 18630 is new. It provides that the common law alter ego doctrine applicable
to corporations may also be applied to nonprofit associations. The alter ego doctrine is
993 (1995) (“In general, the two requirements for applying the alter ego doctrine are that (1) there
is such a unity of interest and ownership between the corporation and the individual or
organization controlling it that their separate personalities no longer exist, and (2) failure to
disregard the corporate entity would sanction a fraud or promote injustice.”).

In applying the alter ego doctrine to unincorporated associations, a court should take into
account differences in form between a corporation and a nonprofit association. For example,
failure to observe corporate formalities may be a factor in a decision to impose alter ego liability
on shareholders of a corporation. Although it may be unreasonable to expect a nonprofit
association to observe the governance formalities required of a corporation, it would be
reasonable to expect that a nonprofit association will follow the governance formalities it has
established for itself. Failure to do so may indicate that the personality of a nonprofit association
and its members are not truly separate.

Failure to provide a corporation with reasonably adequate assets to cover its prospective
liabilities may also justify imposing alter ego liability on shareholders of a corporation. In
Automotriz del Golfo de California v. Resnick, 47 Cal. 2d 792, 797 (1957), the court relied in
part on inadequate capitalization to justify imposing alter ego liability (quoting Ballantine on
Corporations (1946)):

If a corporation is organized and carries on business without substantial capital in such a way
that the corporation is likely to have no sufficient assets available to meet its debts, it is
inequitable that shareholders should set up such a flimsy organization to escape personal
liability. The attempt to do corporate business without providing any sufficient basis of
financial responsibility to creditors is an abuse of the separate entity and will be ineffectual to
exempt the shareholders from corporate debts. It is coming to be recognized as the policy of
the law that shareholders should in good faith put at the risk of the business unencumbered
capital reasonably adequate for its prospective liabilities. If the capital is illusory or trifling
compared with the business to be done and the risks of loss, this is a ground for denying the
separate entity privilege.

This principle could also be applied to a nonprofit association. However, it would be necessary to
carefully consider the nature of the association to determine what level of unencumbered capital
would be reasonably adequate for the association’s prospective liabilities. For example, a small
historical society, operating a museum that is open to the public, should probably insure against
liability for any injuries suffered by the public while in the museum. Such insurance might
reasonably be considered adequate capitalization. On the other hand, an association that publishes
controversial and potentially defamatory commentaries about public figures might reasonably
anticipate greater risk of liability. If the association fails to insure against that risk or maintain a
cash reserve to satisfy any judgment against it, a court might conclude that the association is
inadequately capitalized.

See also Sections 18010 (“member” defined), 18015 (“nonprofit association” defined),
§ 18635. Enforcement of judgment against nonprofit association

18635. (a) A judgment creditor of a member, officer, or agent of a nonprofit association may not levy execution against the assets of the member, officer, or agent to satisfy a judgment based on a claim against the nonprofit association unless a judgment based on the same claim has been obtained against the nonprofit association and one or more of the following conditions is satisfied:

(1) A writ of execution on the judgment against the nonprofit association has been returned unsatisfied in whole or in part.
(2) The nonprofit association is a debtor in bankruptcy.
(3) The member, officer, or agent has agreed that the creditor need not exhaust the assets of the nonprofit association.
(4) A court grants permission to the judgment creditor to levy execution against the assets of a member, officer, or agent based on a finding that the assets of the nonprofit association subject to execution are clearly insufficient to satisfy the judgment, that exhaustion of the assets of the nonprofit association is excessively burdensome, or that the grant of permission is an appropriate exercise of the court’s equitable powers.

(b) Nothing in this section affects the right of a judgment creditor to levy execution against the assets of a member, officer, or agent of a nonprofit association if the claim against the member, officer, or agent is not based on a claim against the nonprofit association.

Comment. Section 18635 is drawn from Section 16307(d). See also Sections 18010 (“member” defined), 18015 (“nonprofit association” defined).

§ 18640. Fraudulent transfers

18640. Nothing in this chapter limits application of the Uniform Fraudulent Transfer Act.

Comment. Section 18640 is new. It makes clear that limits on liability provided in this chapter do not affect the application of the Uniform Fraudulent Transfer Act. See Civ. Code §§ 3439-3439.12. Thus, if an insolvent association transfers assets to a member (e.g., through a general distribution or redemption of membership), those assets may be subject to attachment by a creditor, regardless of whether the member is personally liable for the debt.

CHAPTER 2. INSIGNIA

§ 18700. “Insignia” defined

18700. As used in this chapter, “insignia” includes a badge, motto, button, decoration, charm, emblem, or rosette.

Comment. Section 18700 continues former Section 21300(b) without substantive change.

Note. Former Section 21300(a) defined the term “association” as “any lodge, order, beneficial association, fraternal or beneficial society or association, historical, military, or veterans organization, labor union, foundation, or federation, or any other society, organization, or association, or degree, branch, subordinate lodge, or auxiliary thereof.” Given the examples cited the definition, and the fact that the insignia provisions are contained within a part entitled “Nonprofit Associations,” the Commission concludes that the term is synonymous with the term
“nonprofit association” as defined in proposed Section 18015. For the sake of clarity, the term “nonprofit association” has been substituted for the term “association” throughout this chapter. The Commission would like to receive comments on whether that would cause any problems.

§ 18701. Registration of name or insignia
18701. Any nonprofit association, the principles and activities of which are not repugnant to the Constitution or laws of the United States or of this State, may register in the office of the Secretary of State a facsimile or description of its name or insignia and may by reregistration alter or cancel it.

Comment. Section 18701 continues former Section 21301 without substantive change. Note that the term “association” has been replaced with the term “nonprofit association.” See Section 18015 (“nonprofit association” defined).

§ 18702. Deceptively similar name or insignia
18702. A nonprofit association shall not be permitted to register any name or insignia similar to or so nearly resembling another name or insignia already registered as may be likely to deceive.

Comment. Section 18702 continues former Section 21302 without substantive change. Note that the term “association” has been replaced with the term “nonprofit association.” See Section 18015 (“nonprofit association” defined).

§ 18703. Application for registration, alteration, or cancellation
18703. Application for registration, alteration, or cancellation pursuant to this chapter shall be made by the chief officer or officers of the nonprofit association, upon blanks to be provided by the Secretary of State. Such registration shall be for the use and benefit and on behalf of the association, the individual members, and those hereafter to become members thereof.

Comment. Section 18703 continues former Section 21303 without substantive change. Note that the term “association” has been replaced with the term “nonprofit association.” See Sections 18010 (“member” defined), 18015 (“nonprofit association” defined).

§ 18704. Fee
18704. The Secretary of State shall charge and collect a fee as set forth in paragraph (2) of subdivision (b) of Section 12191 of the Government Code for each registration made under this chapter.

Comment. Section 18704 continues former Section 21304 without change.

§ 18705. Certificate of registration
18705. Upon registration of a nonprofit association under this chapter, the Secretary of State shall issue a certificate setting forth the fact of the registration.

Comment. Section 18705 continues former Section 21305 without substantive change. Note that the term “association” has been replaced with the term “nonprofit association.” See Section 18015 (“nonprofit association” defined).
§ 18706. Indexed record of registrations

18706. The Secretary of State shall keep a properly indexed record of the registrations provided for by this chapter. The record shall also show any altered or canceled registration.

Comment. Section 18706 continues former Section 21306 without substantive change.

§ 18707. Unauthorized use of registered name or insignia

18707. Any person who willfully wears, exhibits, or uses for any purpose a name or insignia registered under this chapter, who is not entitled to use, wear, or exhibit the name or insignia under the constitution, bylaws, or rules of the nonprofit association that registered it, is guilty of a misdemeanor punishable by fine of not to exceed two hundred dollars ($200) or by imprisonment in the county jail for a period not to exceed 60 days.

Comment. Section 18707 continues former Section 21307 without substantive change. Note that the term “association” has been replaced with the term “nonprofit association.” See Section 18015 (“nonprofit association” defined).

§ 18708. Injunction to restrain unauthorized use of name or insignia

18708. Any court of competent jurisdiction may restrain by injunction:

(a) Wearing or use of the insignia of a nonprofit association, unless the person wearing or using the insignia is entitled to wear or use the insignia under the constitution, by-laws or rules of the nonprofit association.

(b) Use of the name of a nonprofit association in a commercial venture, trade or business or in the solicitation of subscriptions for or advertising in a newspaper or other publication or in the solicitation of donations by a person representing directly or indirectly that the commercial venture, trade or business, newspaper or other publication, or donation or solicitation for donation, is sponsored, endorsed or being offered by the nonprofit association, unless the person using the name is entitled to do so under the constitution, by-laws or rules of the nonprofit association or has the written consent of the nonprofit association.

Comment. Section 18708 continues former Section 21308 without substantive change. Note that the term “association” has been replaced with the term “nonprofit association.” See Section 18015 (“nonprofit association” defined).

§ 18709. Damages recoverable in addition to injunctive relief

18709. In an action under Section 18708 it is not necessary to allege or prove actual damages or the threat thereof, or actual injury or the threat thereof to the plaintiff. In addition to injunctive relief a plaintiff in an action under Section 18708 is entitled to recover the amount of the actual damages, if any, sustained by the plaintiff.

Comment. Section 18709 continues former Section 21309 without substantive change.
§ 18710. Evidence of unlawful use of name or insignia

18710. The use of the name or insignia of a nonprofit association by a person not entitled to use the name or insignia under the constitution, by-laws, rules or regulations of the association or by the written consent of the nonprofit association, is presumptive evidence of the unlawful use of or traffic in the name or insignia.

Comment. Section 18710 continues former Section 21310 without substantive change. Note that the term “association” has been replaced with the term “nonprofit association.” See Section 18015 (“nonprofit association” defined).

CHAPTER 3. DEATH BENEFIT PAYMENTS BY FRATERNAL SOCIETIES

§ 18750. Payment of benefits in excess of burial expenses of member

18750. Whenever a fraternal society or lodge, other than a society subject to supervision by the Insurance Commissioner, pays benefits contingent on the death of a member, beneficiaries other than the following relatives by blood, marriage, or adoption shall be paid only the excess of the amount of the benefits over the expense of burial of the member: spouse, relative by blood to the fourth degree, father-in-law, mother-in-law, son-in-law, daughter-in-law, stepfather, stepmother, stepchildren, children by legal adoption, and parents by legal adoption.

Comment. Section 18750 continues former Section 21400 without substantive change. See also Section 18010 (“member” defined).

§ 18751. Liability of society for burial expenses

18751. Any fraternal society or lodge which makes any payment in violation of this chapter is liable for the expense of burial of the member to the extent of the amount paid in violation thereof.

Comment. Section 18751 continues former Section 21401 without substantive change. See also Section 18010 (“member” defined).

CHAPTER 4. NONPROFIT MEDICAL ASSOCIATIONS

Article 1. Definitions

§ 18800. “Nonprofit medical association” defined

18800. As used in this chapter, “nonprofit medical association” means an unincorporated association that is an organized medical society limiting its membership to licensed physicians and surgeons and that has as members at least 25 percent of the eligible physicians and surgeons residing in the area in which it functions (which must be at least one county). However, if the association has less than 100 members, it shall have as members at least a majority of the eligible persons or licensees in the geographic area served by the particular association.
Comment. Section 18800 continues the definition provisions of former Section 21200 without substantive change.

See also Section 18010 (“member” defined).

Article 2. Member Liability

§ 18805. Liability of member of nonprofit medical association

18805. A member of a nonprofit medical association may not be held personally liable for a contractual obligation of the association, except in one of the following circumstances:

(a) The member expressly assumes personal responsibility for the obligation.
(b) With notice of the contract, the member receives a benefit under the contract.

Liability under this subdivision is limited to the value of the benefit received.

Comment. Section 18805 is drawn in part from former Section 21200, which provided that a member of a nonprofit medical association is not liable for “debts or liabilities contracted or incurred by the association in the carrying out or performance of any of its purposes.” That exemption from liability has been narrowed slightly to permit member liability where the member has expressly assumed liability for a contract or receives a personal benefit under a contract. A member would also be liable for a tort where the member has expressly assumed liability or where the tort is based on the member’s own tortious conduct. See Section 18620.

See also Sections 18010 (“member” defined), 18800 (“nonprofit medical association” defined).

Article 3. Director and Officer Liability

§ 18810. Finding and declaration

18810. The Legislature finds and declares that the services of directors or officers of nonprofit medical associations who serve without compensation are critical to the efficient conduct and management of the public service and charitable affairs of the people of California. The willingness of volunteers to offer their services has been deterred by a perception that their personal assets are at risk for these activities. The unavailability and unaffordability of appropriate liability insurance makes it difficult for these associations to protect the personal assets of their volunteer decisionmakers with adequate insurance. It is the public policy of this state to provide incentive and protection to the individuals who perform these important functions.

Comment. Section 18810 continues former Section 24001.5(a) without substantive change.

See Section 18800 (“nonprofit medical association” defined).

§ 18811. Liability limited

18811. (a) Except as provided in this article, no cause of action for monetary damages shall arise against any person serving without compensation as a director or officer of a nonprofit medical association, on account of any negligent act or omission occurring (1) within the scope of that person’s duties as a director acting as a board member, or within the scope of that person’s duties as an officer acting in an official capacity; (2) in good faith; (3) in a manner that the person believes to
be in the best interest of the association; and (4) is in the exercise of his or her policymaking judgment.

(b) This section does not apply to any volunteer director or officer who receives compensation from the association in any other capacity, including, but not limited to, as an employee.

(c) For the purpose of this section, the payment of actual expenses incurred in attending meetings or otherwise in the execution of the duties of a director or officer shall not constitute compensation.

Comment. Section 18811 continues former Section 24001.5(b), (f), & (i) without substantive change. See Section 18800 (“nonprofit medical association” defined).

§ 18812. Exceptions

18812. Section 18811 does not limit the liability of a director or officer for any of the following:

(a) Self-dealing transactions, as described in Sections 5233 and 9182.

(b) Conflicts of interest, as described in Section 7233.

(c) Actions described in Sections 5237, 7236, and 9245.

(d) In the case of a charitable trust, an action or proceeding against a trustee brought by a beneficiary of that trust.

(e) Any action or proceeding brought by the Attorney General.

(f) Intentional, wanton, or reckless acts, gross negligence, or an action based on fraud, oppression, or malice.

(g) Any action brought under Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code.

Comment. Section 18812 continues former Section 24001.5(c) without substantive change. See Section 18800 (“nonprofit medical association” defined).

§ 18813. Tax exempt status

18813. Section 18811 only applies to a nonprofit organization organized to provide charitable, educational, scientific, social, or other forms of public service that is exempt from federal income taxation under Section 501(c)(3) or 501(c)(6) of the Internal Revenue Code.

Comment. Section 18813 continues former Section 24001.5(d) without substantive change. See Section 18800 (“nonprofit medical association” defined).

§ 18814. Liability insurance

18814 Section 18811 only applies if the nonprofit medical association maintains a general liability insurance policy with an amount of coverage of at least the following amounts:

(a) If the association’s annual budget is less than fifty thousand dollars ($50,000), the minimum required amount is five hundred thousand dollars ($500,000).
(b) If the association’s annual budget equals or exceeds fifty thousand dollars ($50,000), the minimum required amount is one million dollars ($1,000,000).

This section applies only if the general liability insurance policy is in force both at the time of injury and at the time that the claim is made, so that the policy is applicable to the claim.

Comment. Section 18814 continues former Section 24001.5(e) without substantive change. See also Section 18800 (“nonprofit medical association” defined).

§ 18815. Nondiscrimination

18815. Section 18811 does not apply to any association that unlawfully restricts membership, services, or benefits conferred on the basis of race, religious creed, color, national origin, ancestry, sex, marital status, disability, political affiliation, or age.

Comment. Section 18815 continues former Section 24001.5(g) without substantive change. See Section 18800 (“nonprofit medical association” defined).

§ 18816. Liability of association

18816. Nothing in this article shall be construed to limit the liability of a nonprofit medical association for any negligent act or omission of a director, officer, agent, or employee occurring within the scope of the duties of the director, officer, agent, or employee.

Comment. Section 18816 continues former Section 24001.5(g) without substantive change. See Section 18800 (“nonprofit medical association” defined).

PART 3. BUSINESS ASSOCIATIONS

CHAPTER 1. JOINT STOCK ASSOCIATIONS

§ 18900. Unauthorized use of name in advertising

18900. Every person who, without being authorized so to do, subscribes the name of another to or inserts the name of another in any prospectus, circular, or other advertisement, or announcement of any joint stock association, existing or intended to be formed, with intent to permit the document to be published, and thereby to lead persons to believe that the person whose name is so subscribed is an officer, agent, member, or promoter of such association, is guilty of a misdemeanor.

Comment. Section 18900 continues former Section 22000 without change. See also Section 18010 (“member” defined).

§ 18901. False statements

18901. Every director, officer, or agent of any joint stock association is guilty of a felony who knowingly concurs in making, publishing, or posting either generally or privately to the stockholders or other persons, any written report, exhibit, or
statement of its affairs or pecuniary condition, or book or notice containing any material statement which is false, or any untrue or willfully or fraudulently exaggerated report, prospectus, account, statement of operations, values, business, profits, expenditures, or prospects, or any other paper or document intended to produce or give, or having a tendency to produce or give, the shares of stock in the association a greater value or a less apparent or market value than they really possess.

Comment. Section 18901 continues former Section 22001 without substantive change.

§ 18902. Fraudulent documents and accounts

18902. (a) Every director, officer, or agent of a joint stock association, who knowingly receives or possesses himself of property of the association, otherwise than in payment of a just demand, and, with intent to defraud, omits to make, or to cause or direct to be made, a full and true entry thereof in the books or accounts of the association, is guilty of a public offense.

(b) Every director, officer, agent, or member of a joint stock association who, with intent to defraud, destroys, alters, mutilates, or falsifies any of the books, papers, writings, or securities belonging to the association, or makes or concurs in making false entries, or omits or concurs in omitting to make a material entry in a book of accounts or other record or document kept by the association, is guilty of a public offense.

(c) Each public offense specified in this section is punishable by imprisonment in a state prison, or by imprisonment in a county jail not exceeding one year, or a fine not exceeding one thousand dollars ($1,000), or by both fine and imprisonment.

Comment. Section 18902 continues former Section 22002 without substantive change. See also Section 18010 (“member” defined).

§ 18903. Presumption of directors’ knowledge of association affairs

18903. For the purposes of this chapter every director of a joint stock association is deemed to possess such knowledge of the affairs of the association as to enable the director to determine whether any act, proceeding, or omission of its directors is a violation of this chapter.

Comment. Section 18903 continues former Section 22003 without substantive change.

CHAPTER 2. REAL ESTATE INVESTMENT TRUSTS

§ 18950. “Real estate investment trust” defined

18950. (a) “Real estate investment trust” as used in this part means any unincorporated association or trust formed to engage in business and managed by, or under the direction of, one or more trustees for the benefit of the holders or owners (hereinafter in this chapter “shareowners”) of transferable shares of
beneficial interest in the trust estate (hereinafter in this chapter “shares”) and which meets one of the following two tests:

(1) It received, prior to the effective date of this part, an order, permit or qualification from the Commissioner of Corporations pursuant to the provisions of the Corporate Securities Law of 1968 or any predecessor statute finding that it was a real estate investment trust, notwithstanding the subsequent amendment, suspension or revocation of any such finding, order, permit or qualification, and it has for one or more of its three fiscal years immediately prior to the effective date of this part complied with, or in good faith filed a federal income tax return on the basis that it has complied with the requirements for real estate investment trusts set forth in Section 856 of the Federal Internal Revenue Code; or

(2) It is formed for the purpose of engaging in business as a real estate investment trust under Part II of Subchapter M of Chapter 1 of Subtitle A of the Federal Internal Revenue Code of 1954, as amended from time to time; the sale of its shares has been qualified at any time by the Commissioner of Corporations pursuant to the Corporate Securities Law of 1968; and in good faith it has commenced business as a real estate investment trust.

(b) An unincorporated association or trust which otherwise meets the requirements of this section shall not be affected in its status as a real estate investment trust whether or not it is in fact taxable for any year or years under Part II of Subchapter M of Chapter 1 of Subtitle A of the Federal Internal Revenue Code of 1954, as amended from time to time.

Comment. Section 18950 continues former Section 23000 without substantive change. Subdivision and paragraph designations have been revised for clarity.

§ 18951. Nonliability of shareowners

18951. No shareowner of a real estate investment trust shall be personally liable as such for any liabilities, debts or obligations of, or claims against, the real estate investment trust, whether arising before or after such shareowner became the owner or holder of the shares thereof.

Comment. Section 18951 continues former Section 23001 without change.

§ 18952. Claims

18952. Section 18951 shall apply to any real estate investment trust organized under the laws of this state with respect to liabilities, debts, obligations and claims wherever arising, and to any real estate investment trust organized under the laws of a foreign jurisdiction with respect to liabilities, debts, obligations and claims arising in this state.

Comment. Section 18952 continues former Section 23002 without change.

§ 18953. Prohibition against issuance of security redeemable at holder’s option

18953. A real estate investment trust shall not issue any security redeemable at the option of the holder of the security.
Comment. Section 18953 continues former Section 23003 without change.

§ 18954. Application of Section 18951
18954. Section 18951 shall apply with respect to all liabilities, debts, obligations of, and claims against, a real estate investment trust arising after August 28, 1976, and prior law shall continue to govern with respect to liabilities, debts, obligations and claims existing on August 28, 1976. No implication shall be created by the adoption of this chapter or the adoption of former Part 5 (commencing with Section 23000) of this title, which this chapter continues, that the holders or owners of shares of beneficial interest in business trusts which do not meet the definition of real estate investment trust in Section 18950 are, or are not, as such, personally liable for the liabilities, debts or obligations of, or claims against, any such trust.

Comment. Section 18954 continues former Section 23004 without substantive change. To avoid ambiguity, the date August 28, 1976, has been substituted for references to “the effective date of this part” as it was originally enacted. A reference to “adoption of this part” has been expanded to make clear that the reference includes adoption of this chapter as well as adoption of the former part that it continues.

§ 18955. Bankruptcy
18955. The provisions of Sections 1400 and 1402 governing bankruptcy reorganizations and arrangements for corporations also apply to real estate investment trusts. Where the term “corporation” is used in those sections it shall also include the term “real estate investment trust”, the terms “director” or “board of directors” shall include “trustee” or “board of trustees”, the term “articles” shall include “declaration of trust” and the term “capital stock” shall include “shares of beneficial interest.”

Comment. Section 18955 continues former Section 23005 without substantive change.

§ 18956. Merger
18956. (a) The following entities may be merged pursuant to this article:
(1) Any two or more real estate investment trusts into one real estate investment trust, provided that the merger is specifically permitted by the declarations of trust, and that procedure is detailed in those declarations.
(2) One or more real estate investment trusts with one or more limited partnerships into one limited partnership, provided that the merger is specifically permitted by the declarations of trust, and that procedure is detailed in those declarations.
(3) One or more real estate investment trusts with one or more limited partnerships into one real estate investment trust, provided that the merger is specifically permitted by the declarations of trust, and that procedure is detailed in those declarations.
(b) Any merger under this section shall only be effective upon the approval of
the holders of a majority of the shares of beneficial interest of the real estate
investment trust.

Comment. Section 18956 continues former Section 23006 without change.

Corp. Code §§ 20000-24007 (repealed). Unincorporated associations
SEC. ___. Title 3 (commencing with Section 20000) of the Corporations Code is
repealed.

__________________

CONFORMING REVISIONS

Code Civ. Proc. § 395.2 (amended). Place of trial in action against unincorporated
association
SEC. ___. Section 395.2 of the Code of Civil Procedure is amended to read:
395.2. If an unincorporated association has filed a statement with the Secretary
of State pursuant to Section 24003 of the Corporations Code listing statute,
designating its principal office in this state, the proper county for the trial of an
action against such unincorporated association is the same as it would be if the
unincorporated association were a corporation and, for the purpose of determining
such county, the principal place of business of the unincorporated association shall
be deemed to be the principal office in this state listed in the statement.

Comment. Section 395.2 is amended to reflect the fact that an unincorporated association may
file a statement designating its principal office under sections other than former Corporations
Code Section 24003 (continued without substantive change in Corporations Code Section 18200).
See, e.g., Corp. Code §§ 15621(a)(4) (limited partnership), 16309 (general partnership),
16953(a)(3) (limited liability partnership), 17051(a)(4) & 17060(a)(2) (limited liability company).

SEC. ___. Section 416.40 of the Code of Civil Procedure is amended to read:
416.40. A summons may be served on an unincorporated association (including
a partnership) by delivering a copy of the summons and of the complaint:
(a) If the association is a general or limited partnership to the person designated
as agent for service of process as provided in Section 24003 of the Corporations
Code or to a general partner or the general manager of the partnership;
(b) If the association is not a general or limited partnership, to the person
designated as agent for service of process as provided in Section 24003 of the
Corporations Code or to the president or other head of the association, a vice
president, a secretary or assistant secretary, a treasurer or assistant treasurer, a
general manager, or a person authorized by the association to receive service of
process;
(c) When authorized by Section 15700 or 24007 of the Corporations Code, as provided by the applicable that section.

Comment. Section 416.40 is amended to reflect the fact that an unincorporated association may designate an agent for service of process under sections other than former Corporations Code Section 24003 (continued without substantive change in Corporations Code Section 18200). See, e.g., Corp. Code §§ 15621(a)(4) (limited partnership), 16309 (general partnership), 16953(a)(3) (limited liability partnership), 17051(a)(4) & 17060(a)(2) (limited liability company).

Code Civ. Proc. § 695.080 (added). Enforcement of money judgment against unincorporated association

695.080. A money judgment against an unincorporated association, whether organized for profit or not, may be enforced only against the property of the association.

Comment. Section 695.080 continues former Corporations Code Section 24002 without substantive change.

Corp. Code § 16202 (amended). Formation of partnership

SEC. ___. Section 16202 of the Corporations Code is amended to read:

16202. (a) Except as otherwise provided in subdivision (b), the association of two or more persons to carry on as coowners a business for profit forms a partnership, whether or not the persons intend to form a partnership.

(b) An association formed under a statute other than this chapter, a predecessor statute, or a comparable statute of another jurisdiction is not a partnership under this chapter. An association formed pursuant to case law governing a specific type of association is not a partnership under this chapter.

(c) In determining whether a partnership is formed, the following rules apply:

1. Joint tenancy, tenancy in common, tenancy by the entireties, joint property, common property, or part ownership does not by itself establish a partnership, even if the coowners share profits made by the use of the property.

2. The sharing of gross returns does not by itself establish a partnership, even if the persons sharing them have a joint or common right or interest in property from which the returns are derived.

3. A person who receives a share of the profits of a business is presumed to be a partner in the business, unless the profits were received for any of the following reasons:

   (A) In payment of a debt by installments or otherwise.

   (B) In payment for services as an independent contractor or of wages or other compensation to an employee.

   (C) In payment of rent.

   (D) In payment of an annuity or other retirement benefit to a beneficiary, representative, or designee of a deceased or retired partner.

   (E) In payment of interest or other charge on a loan, even if the amount of payment varies with the profits of the business, including a direct or indirect
present or future ownership of the collateral, or rights to income, proceeds, or increase in value derived from the collateral.

(F) In payment for the sale of the goodwill of a business or other property by installments or otherwise.

Comment. Section 16202 is amended to make clear that an unincorporated business association formed pursuant to case law authority is not a partnership. For example, a business trust is not a partnership. See Goldwater v. Oltman, 201 Ca. 408, 292 P. 624 (1930).

Corp. Code § 16309 (added). Designation of agent for service of process

SEC. ____. Section 16309 is added to the Corporations Code, to read:

16309. (a) The statement of partnership authority may designate an agent for service of process. The agent may be an individual residing in this state or a corporation that has complied with Section 1505 and whose capacity to act as an agent has not terminated. If an individual is designated, the statement shall include that person’s complete business or residence address in this state.

(b) An agent designated for service of process may file with the Secretary of State a signed and acknowledged written statement of resignation as an agent. On filing of the statement of resignation, the authority of the agent to act in that capacity shall cease and the Secretary of State shall give written notice of the filing of the statement of resignation by mail to the partnership, addressed to its principal executive office.

(c) If an individual who has been designated agent for service of process dies or resigns or no longer resides in the state, or if the corporate agent for that purpose resigns, dissolves, withdraws from the state, forfeits its right to transact intrastate business, has its corporate rights, powers, and privileges suspended, or ceases to exist, the partnership or foreign partnership shall promptly file an amended statement of partnership authority, designating a new agent.

Comment. Section 16309 is new. Similar provisions govern designation of an agent for service of process by other types of unincorporated business entities. See Sections 15627(d) (limited partnership), 16962(a) (limited liability partnership), 17061(d) (limited liability company).

Corp. Code § 16310 (added). Service of process on designated agent

SEC. ____. Section 16310 is added to the Corporations Code, to read:

16310. (a) If a partnership has designated an agent for service of process, process may be served on the partnership as provided in this section and in Chapter 4 (commencing with Section 413.10) of Title 5 of Part 2 of the Code of Civil Procedure.

(b) Personal service of a copy of any process against the partnership by delivery to an individual designated by it as agent, or if the designated agent is a corporation, to a person named in the latest certificate of the corporate agent filed pursuant to Section 1505 at the office of the corporate agent, shall constitute valid service on the partnership.
(c) No change in the address of the agent for service of process or appointment of a new agent for service of process shall be effective until an amendment to the statement of partnership authority is filed.

(d)(1) If an agent for service of process has resigned and has not been replaced, or if the designated agent cannot with reasonable diligence be found at the address designated for personal delivery of the process, and it is shown by affidavit to the satisfaction of the court that process against a partnership cannot be served with reasonable diligence upon the designated agent by hand in the manner provided in Section 415.10, subdivision (a) of Section 415.20, or subdivision (a) of Section 415.30 of the Code of Civil Procedure, the court may make an order that the service shall be made on a partnership by delivering by hand to the Secretary of State, or to any person employed in the Secretary of State’s office in the capacity of assistant or deputy, one copy of the process for each defendant to be served, together with a copy of the order authorizing the service. Service in this manner shall be deemed complete on the 10th day after delivery of the process to the Secretary of State.

(2) Upon receipt of the copy of process and the fee for service, the Secretary of State shall give notice of the service of the process to the partnership, at its principal executive office, by forwarding to that office, by registered mail with request for return receipt, the copy of the process.

(3) The Secretary of State shall keep a record of all process served on the Secretary of State under this section and shall record therein the time of service and the action taken by the Secretary of State. A certificate under the Secretary of State’s official seal, certifying to the receipt of process, the giving of notice to the partnership, and the forwarding of the process pursuant to this section, shall be competent and prima facie evidence of the service of process.

Comment. Section 16310 is new. Similar provisions govern service of process on other types of unincorporated business entities. See Sections 15627(a)-(b) (limited partnership), 16962(b)-(f) (limited liability partnership), 17061(a)-(c) (limited liability company).